FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

Second Appeal No. 314/2005
(Kachrulal Nathmalji Joshi **VERSUS** Jaiwantrao Sadashivrao Halwane**)**
AND
Second Appeal No. 341/2005
(Kachrulal Nathmalji Joshi **VERSUS** Jaiwantrao Sadashivrao Halwane**)**

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's orders

Ms. Tiwari, holding for Mr.Mardikar, counsel for the appellant.
Mr. Chopde, counsel for the respondent.

CORAM : Smt. Vasanti A. Naik, J.
DATE : 18th September, 2007.

Heard the learned counsel for the parties.

The appellant is the original plaintiff. A suit was filed by the plaintiff against the defendant for a permanent injunction restraining the defendant from tying his cattle on the suit property which, according to the plaintiff, belonged to him. The plaintiff also sought a mandatory injunction directing the defendant to remove his cattle shed from the suit property. The suit came to be filed on a plea that the defendant had encroached upon the land belonging to the plaintiff and since the defendant was tying his cattle on the suit land, it caused nuisance to the plaintiff. The plaintiff and the defendant were the adjacent plot owners.

The defendant denied the claim of the plaintiff and pleaded that the defendant was tying the cattle on his own land. It was further pleaded by the defendant that he had purchased the suit property by

a registered sale-deed. The defendant then pleaded that the suit of the plaintiff was liable to be dismissed.

On the aforesaid pleadings of the parties, the trial Court framed the issues. After considering the evidence tendered by the parties on record, the trial Court held that the plaintiff had failed to prove his ownership over the suit property.

The plaintiff had not produced any title deed on record to show his ownership over the suit property but, had merely relied on a partition deed. The plot described in the sale-deed at Exh.52 produced by the defendant, appeared to be the suit site itself.

The trial Court, however, restrained the defendant permanently from tying his cattle or keeping his bullock cart in the open space to the south of the plaintiff's house and more particularly beyond the area stated in the sale-deed at Exh.52. The suit of the plaintiff for permanent injunction was, however, dismissed.

The defendant preferred an appeal against the part of the decree granted in favour of the plaintiff. The plaintiff preferred a separate appeal against the rejection of part of his claim. The first appellate Court, on a reappreciation of the evidence tendered by the parties on record, by the judgment dated 15.12.2004 dismissed the appeal filed by the plaintiff and allowed the appeal filed by the defendant. Consequently, in view of the judgment of the appellate

Court, the suit of the plaintiff was dismissed in its entirety.

The plaintiff has preferred two second appeals against the judgment passed by the first appellate Court by which the appeal filed by the plaintiff was dismissed and the one filed by the defendant was allowed.

I have perused the judgment passed by the first appellate Court. The first appellate Court has properly appreciated the material evidence on record to hold that the plaintiff did not have any right to claim injunction against the defendant in respect of the disputed site. The appellate Court further held that the plaintiff failed to prove that the defendant had encroached upon the suit site which belonged to the plaintiff. While recording the aforesaid findings, the appellate Court considered the oral and documentary evidence on record. The first appellate Court rightly discarded the commissioner's map at Exh.12 as the commissioner had merely measured the plot belonging to the defendant and had not measured the plaintiff's property. Since the suit was filed by the plaintiff claiming ownership over the suit site, the appellate Court rightly held that the commissioner ought to have examined the land of the plaintiff in stead of examining the land of the defendant to see as to whether the defendant had encroached upon the plaintiff's land.

The findings recorded by the first appellate Court are pure findings of fact which do not give rise to any substantial question of law. The second appeal is, therefore, dismissed with no order as to costs.

JUDGE

APTE